United States Department of Labor Employees' Compensation Appeals Board

N.W., Appellant	·))
and) Docket No. 11-1026 Lagrand: November 25, 2011
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Philadelphia, PA, Employer) Issued: November 25, 2011))
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On March 21, 2011 appellant filed a timely appeal of a September 20, 2010 Office of Workers' Compensation Programs' (OWCP) nonmerit decision. The Board docketed the appeal as No. 11-1026. By its September 20, 2010 decision, OWCP found that appellant abandoned her request for a hearing. Because more than 180 days has elapsed from the last merit decision dated April 22, 2010 to the filing of this appeal, the Board lacks jurisdiction to review the merits of her claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.1

Appellant, a 40-year-old correctional officer, was struck in the face by water discharged from a fire extinguisher on March 1, 2010. She filed a claim for traumatic injury on March 3, 2010, alleging that she sustained an injury to her left eye causally related to the March 1, 2010 work incident. By decision dated April 22, 2010, OWCP denied the claim, finding that appellant failed to submit medical evidence sufficient to establish her claim. On May 18, 2010 appellant requested an oral hearing. On July 28, 2010 OWCP issued a notice of hearing and provided procedural information regarding the hearing. The notice stated that a hearing would be held on September 1, 2010 at 11:45 a.m. and was addressed to appellant at 550 Dupont Parkway, 46W,

¹ For OWCP decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008).

New Castle, DE 19720. Appellant did not appear at the hearing. By decision dated September 20, 2010, OWCP determined that she had abandoned her request for a hearing.

The Board has duly considered the matter and finds that OWCP erred in finding that appellant abandoned her request for a hearing. A review of the case file reveals that OWCP's July 28, 2010 notice of hearing was sent to 550 Dupont Parkway 46W, New Castle, DE 19720, rather than to appellant's address of record, 550 South Dupont Parkway, 46W, New Castle, DE 19720, and that appellant never received a copy of the notice. Accordingly, as the notice of hearing was mailed to an incorrect address, the September 20, 2010 decision is set aside. The case will be remanded to OWCP for rescheduling of the requested oral hearing.²

IT IS HEREBY ORDERED THAT the September 20, 2010 decision of the Office of Workers' Compensation Programs is set aside; the case record is remanded for further proceedings consistent with this order of the Board.

Issued: November 25, 2011 Washington, DC

Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

Alec J. Koromilas, Judge Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

² Given the disposition of this matter, the Board will not schedule oral argument before the Board.